IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 70 OF 1998.

1. State of Goa,
   through the Deputy Collector,
   (LA) & Land Acquisition Officer,
   Panaji, Goa.

2. The Chief Town Planner,
   Town & Country Planning Department,
   Panaji, Goa. ... Appellants.

VERSUS

Shri Prabhakar Shivram Naik
Pankar, resident of Mapusa,
Goa. ... Respondent.

Mr. H.R. Bharne, Government Advocate for the Appellants.

Mr. J.P.Mulgaonkar, Advocate for the Respondent.

CORAM: N.A. BRITTO, J.

DATE OF RESERVING THE JUDGMENT: 26.03.2004.
DATE OF PRONOUNCING THE JUDGMENT: 2.04.2004

J U D G M E N T:

The State of Goa has filed the present appeal against the Judgment/Award dated 29.7.1997 of the learned Addl. District Judge, Panaji, Panaji in LAC No.111/90.

2. Briefly stated by virtue of Notification issued under Section 4(1) of the Land Acquisition Act, 1894 and published in Government Gazette dated 7.1.82 the Government acquired 92,745 sq. metres of land situated at Porvorim for residential development under Integrated Development Programme and in that

was included a plot of land No.13 admeasuring 1250 sq. metres belonging to the firm M/s. Shivram Dattaram Pankar of which the respondent was a partner and the L.A.O. by virtue of Award dated 31.1.1984 awarded to the respondent compensation for the said acquisition at the rate of Rs.25/- per sq.m. and as against the same respondent sought a reference o the District Court, Panaji and the learned Addl. District Judge by his Award dated 29.7.97 enhanced the compensation to Rs.119.70 per sq.m.

3. The first submission made by Shri Bharne, learned Government Advocate is that the Trial Court has done fallacious exercise by fixing the market value based on an average price of two Sale Deeds.

4. However, learned Advocate Shri Mulgaonkar on behalf of the respondent has submitted that the learned Trial Court used the Sale Deed dated 12.10.81 - Exh.12 for the purpose of fixing the compensation payable to the respondent while the learned Trial Court has used the Sale Deed dated 17.6.82 for the purpose of granting increase of price to the respondent. I am entirely in agreement with the submission of learned Advocate Shri Mulgaonkar that the learned Trial Court has used the Sale Deed dated

12.10.81 - Exh.12 as a guide to enhance compensation payable to the respondent while the learned Trial Court has used the Sale Deed dated 7.6.82 for the purpose of granting an increase on sale price to the respondent. Trial Court

5. The next submission of Shri Bharne, learned Government Advocate is that the plot in Sale Deed - Exh.12 was a developed plot while the plot of the respondent was not a developed plot and therefore the learned Trial Court ought to have taken at least 65% towards the cost of development. Shri Bharne has placed reliance on the case of **Basavva (Smt) and others v. Spl. Land Acquisition Officer and Others** (1996) 9 S.C.C., 640 in support of his submission that 65% of deduction was made by the Hon'ble S.C.. In this case the Hon'ble S.C. reiterated the principle that developmental charges on deduction between 33-1/3 to 53% was held to be valid by that Court in several Judgments. As far as the facts of **Basavva (Smt) and Others** (supra) are concerned the Hon'ble S.C. did approve the view that 65% of deduction was justifiable in the light of the facts of that case. Shri Bharne has also placed reliance on the case of **Karan Singh and others v. Union of India** (1997) 8 S.C.C., 186 wherein the Hon'ble S.C.

has again reiterated the position that the judgments of courts in land acquisition cases or awards given by the Land Acquisition Officers can be relied upon as a good piece of evidence for determining the market value of the land acquired under certain circumstances and one of the circumstance being that such an award or judgment of the court of law must be a previous judgment.

6. On the other hand, learned Advocate Shri Mulgaonkar has placed reliance on the case of **Tejumal Bhojwani (dead) through LRS. and others v. State of U.P.** (2003) 10 S.C.C., 525 in support of his submission that deduction for development charges ought to be adequately provided for, but they have got to vary from place to place, area to area and the amount of developments cannot be any fixed amount. Shri Mulgaonkar has also placed reliance on the case of Administrator General of West Bengal v. Collector, Varanasi (1988) 2 S.C.C., 150 wherein the Hon'ble Supreme Court has observed that to some extent surmises and conjectures are inevitable in making the valuation.

7. Admittedly the respondent firm had purchased the acquired property namely plot No.13 admeasuring

1250 sq.m. by sale deed dated 28.10.65 at Rs.22.40 per sq.m. There cannot be quarrel with the proposition that developmental charges to be deducted will vary from locality to locality, and from area to area.

8. The learned trial Court has not deducted any amount towards developmental cost of the applicant's property whatsoever. However, the evidence shows that the respondent's property was near developed plot, the respondent firm having purchased the same with the approval of the then Town Planning Committee and it appears that only conversion was not obtained. From the evidence of P.W.2 Shri Paras it can be gathered that the acquired plot was about a metre below the road level. It is true that P.W.2 Paras has stated that it had an advantage of a basement in case construction was made, but it is to be noted that not everyone is interested in construction of basements when house is being constructed and it is also not anybody's case that with a depth of a meter a basement could be constructed. Moreover, it can be seen that the respondent's plot was also abutting the National Highway and therefore certain area of the same would have come under the road widening scheme of the Government. These three minus factors which

the learned Trial Court certainly ought to have taken into consideration before straightaway using the price fetched for the plot of sale deed – Exh.12 for fixing the compensation payable to the respondent's plot. There is no dispute that the Sale Deed of Exh.12 could not be used as guide. Admittedly the respondent's plot was situated on the left side of the National Highway as one goes from Panaji to Mapusa while the plot – Exh.12 was situated on the right of the said Highway and the distance between both being 700 metres. Considering the minus points of the respondent's plot in relation to the plot of Sale Deed – Exh.12, in my opinion a deduction of at least 35% ought to have been made and having made the same, the price to be paid to the respondent's plot can be fixed at Rs.65/- per sq.m.

9. I am therefore not inclined to accept the submission of learned Advocate Shri Mulgaonkar that the deduction ought not to have been more than 10%. Likewise I am not inclined to accept the submission of Shri Bharne that the deduction ought to have been of 65%.

10. The second submission is regarding the increase granted by the trial court at the rate of

Rs.9.85 per sq.m. per month. The reasoning given by the trial court is that the plot of land – Exh.12 was sold at Rs.100/- per sq.m. on 12/10/81 while the plot of land of Sale Deed – Exh.13 was sold for Rs.178/- per sq.m. on 7.6.82. The learned trial Court has observed that the plot of Sale Deed dated 7.6.82 – Exh.13 was located in the interior at about 750 metres away from the respondent's acquired plot. The learned trial Court has jumped to the conclusion that the Sale Deed dated 7.6.1982 shows that there has been a price increase by Rs.9.85 per sq.m. per month.

11. In my opinion the approach of the trial court is wholly incorrect. It is said that one swallow does not make a summer. Based only on one Sale Deed it was not possible to jump to the conclusion that there was increase in market price of land at the rate of Rs.9.85 per sq.m. per month. Admittedly neither the buyer nor the seller of the Sale Deed – Exh.13 was examined and who was examined was an attesting witness who happened to be the nephew of the buyer of the said plot – Exh.13. It appears that the plot of Sale Deed – Exh.13 had a river view and possibly on that count the buyers had paid a price which was slightly more than the price paid for the

Sale Deed - Exh.12. There could be other reasons as well, but from the very Sale Deed at Exh.13 one could not jump to the conclusion that there was price increase to the extent of Rs.9.85 per sq.m. per month in the locality. No doubt the courts do take a note that there is a general trend in rise of prices but in the case at hand the Sale Deed - Exh.12 was executed just less than three months prior to the date of Notification under Section 4 of the Act and that being so, it was not a case where the respondent ought to have been awarded any price increase.

12. In view of the above, the appeal partly succeeds. The compensation payable to the respondent is fixed at Rs.65/- per sq.m. Needless to observe that the respondent will be entitled to all consequential statutory benefits.

N.A. BRITTO, J.

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